

1 DAVID L. ANDERSON (CABN 149604)  
2 United States Attorney

3 HALLIE HOFFMAN (CABN 210020)  
4 Chief, Criminal Division

5 MICHELLE J. KANE (CABN 210579)  
6 MATTHEW A. PARRELLA (NYBN 2040855)  
7 Assistant United States Attorneys

8 1301 Clay Street, Suite 340S  
9 Oakland, California 94612  
Telephone: (510) 637-3680  
FAX: (510) 637-3724  
michelle.kane3@usdoj.gov  
matthew.parrella@usdoj.gov

10 Attorneys for United States of America

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, ) No. CR 16-00440 WHA  
15 Plaintiff, )  
16 v. ) STIPULATION AND [PROPOSED] ORDER  
17 ) CONTINUING STATUS CONFERENCE AND  
18 ) EVIDENTIARY HEARING AND EXCLUDING  
19 ) TIME FROM MARCH 12, 2019, THROUGH APRIL  
YEVGENIY ALEXANDROVICH NIKULIN, ) 30, 2019.  
Defendant. )  
\_\_\_\_\_  
)

20  
21 Defendant Yevgeniy Nikulin, represented by Arkady Bukh and Valery Nечай, and the United  
22 States, represented by Assistant United States Attorneys Michelle J. Kane and Matthew A. Parrella,  
23 hereby stipulate to the following:

24 1. On October 10, 2018, with the agreement of the parties, the Court ordered defendant  
25 committed to the custody of the Bureau of Prisons for purposes of a mental competency examination  
26 pursuant to 18 U.S.C. § 4241(b) (ECF No. 70);

27 2. The Bureau of Prisons Forensic Psychologist provided a report to the Court, which the  
28 Court provided to the parties on February 11, 2019;

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1       3.     The parties appeared before this Court on February 12, 2019, for a hearing regarding  
2 defendant's mental competency, however, defendant was not present because he had not yet been  
3 transported back to this District. The Court set a status conference regarding mental competency  
4 proceedings on March 5, 2019, at 2:00 p.m., and, at the parties' request, set an evidentiary hearing on  
5 competency on March 19, 2019, at 8:00 a.m.;

6       4.     Because defendant's transport back to this District was delayed, for reasons including  
7 severe weather, the parties jointly filed a request that the Court continue the March 5, 2019, status  
8 conference one week to March 12, 2019, at 2:00 p.m., which the Court granted. ECF. No. 76;

9       5.     Upon reviewing the Bureau of Prisons Forensic Psychologist's report, counsel for  
10 defendant consulted his expert, who disagreed with the findings of the report. Therefore, counsel for  
11 defendant is going to contest said report and he is planning on submitting its expert's mental evaluation  
12 report to the Court and the government by April 12, 2019;

13       6.     As such, counsel for defendant and the Government request that the Court continue the  
14 status hearing on competency to April 23, 2019, at 2:00 p.m., and continue the evidentiary hearing  
15 regarding competency to April 30, 2019, at 8:00 a.m.;

16       7.     Both attorneys for the government will be in trial on another matter from April 8, 2019,  
17 through April 18, 2019, therefore April 23, 2019, is the first available date for a status conference  
18 following the defendant's projected completion of his expert report;

19       8.     The Bureau of Prisons Forensic Psychologist and defendant's expert will both be  
20 available to testify at an evidentiary hearing on April 30, 2019;

21       9.     The Court, at the request of the parties, previously designated the case as complex based  
22 on the nature of the prosecution, pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii) ("it is unreasonable to expect  
23 adequate preparation for pretrial proceedings or for the trial itself within the time limits established by  
24 [the Speedy Trial Act]");

25       10.    The parties continue to agree that the matter is complex based on the nature of the  
26 prosecution, and that it is therefore unreasonable to expect adequate preparation for pretrial proceedings  
27 or for the trial itself within the time limits established by the Speedy Trial Act, pursuant to 18 U.S.C. §  
28 3161(h)(7)(B)(ii);

11. The parties also agree that the time until April 30, 2019, is excludable delay resulting from proceedings to determine the mental competency of defendant, pursuant to 18 U.S.C. § 3161(h)(1)(A);

12. The parties further agree that the time until April 30, 2019, is necessary for effective preparation of defense counsel, taking into account the exercise of due diligence, and that the ends of justice served by excluding the period from March 12, 2019, through April 30, 2019, from Speedy Trial Act calculations outweigh the interests of the public and defendant in a speedy trial, in accordance with 18 U.S.C. § 3161(h)(7)(A) and (B)(iv).

## IT IS SO STIPULATED.

DATED: March 9, 2019

Respectfully submitted,

DAVID L. ANDERSON  
United States Attorney

/s/  
MICHELLE J. KANE  
MATTHEW A. PARRELLA  
Assistant United States Attorneys

/s/  
ARKADY BUKH  
Counsel for Yevgeniy Alexandrovich  
Nikulin

/s/  
VALERY NECHAY  
Counsel for Yevgeniy Alexandrovich  
Nikulin

## ORDER

Based upon the stipulation of counsel, and for good cause shown, the Court finds that the case is complex based on the nature of the prosecution and that it is therefore unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(B)(ii).

11

1       Also based upon the stipulation of counsel, and for good cause shown, the Court finds that the  
2 time from March 12, 2019, through April 30, 2019, is excludable delay resulting from proceedings to  
3 determine the mental competency of defendant, pursuant to 18 U.S.C. § 3161(h)(1)(A).

4       Also based upon the stipulation of counsel, and for good cause shown, the Court finds that  
5 failing to exclude the time between March 12, 2019, and April 30, 2019, would unreasonably deny the  
6 defendant the reasonable time necessary for effective preparation, taking into account the exercise of  
7 due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).

8       The Court further finds that the ends of justice served by excluding the time between March 12,  
9 2019, and April 30, 2019, from computation under the Speedy Trial Act outweigh the best interests of  
10 the public and the defendant in a speedy trial. 18 U.S.C. § 3161(h)(7)(A).

11       Therefore, IT IS HEREBY ORDERED that the status conference shall be continued from March  
12 12, 2019, to April 23, 2019, at 2:00 p.m., that the evidentiary hearing on competency shall be continued  
13 from March 19, 2019, to April 30, 2019, at 8:00 a.m., and that the time from March 12, 2019, to April  
14 30, 2019, shall be excluded from computation under the Speedy Trial Act.

15 IT IS SO ORDERED.

16  
17 Dated:

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HON. WILLIAM ALSUP  
United States District Judge